Rosah Timber & Trading Sdn Bhd & Anor v Pengarah Perhutanan Pahang & Ors

HIGH COURT (KUALA LUMPUR) — APPLICATION FOR JUDICIAL REVIEW NO WA-25–565–11 OF 2022
AMARJEET SINGH J
21 AUGUST 2025

Administrative Law — Judicial review — Application for — Certiorari and mandamus — Applicants applied for judicial review against decisions of State Director of Forest of Pahang via two letters in cancelling logging approval and license granted to Yayasan Pahang — Whether decision was bad for procedural impropriety as applicants were not given right to be heard and no reasons were given for such decision — Whether decision was bad for illegality as it was ultra vires — Whether decision was bad for irrationality as it was unreasonable — Whether doctrine of legitimate expectation applicable — Whether there was decision to review in second letter — Whether applicants had substantive local standi — National Forestry Act 1984 s18

Yayasan Pahang had applied for and obtained an approval for logging at a logging area situated in the district of Jerantut, Pahang ('the said logging area'). In this regard, the State Authority, which was the State Executive Council ('the EXCO'), had granted a license pursuant to the National Forestry Act 1984 ('Act 313') in favour of Yayasan Pahang to take forest produce ('the said license') and such license was valid from 15 January 2019 to 14 January 2020. Yayasan Pahang subsequently entered into a logging agreement with the first applicant whereby for a consideration of RM2.94m, the first applicant would extract and take away the timber from the said logging area. It ought to be noted that the first applicant and the second applicant had the same registered address and had common directors and shareholders. The said license was extended by the State Director of Forestry, Pahang ('the State Director') for several times and for the final extension, the premium to be paid was in the sum of RM125,263. The second applicant then applied for an exemption of the premium payment. The matter stood until the emergence of a letter dated 26 July 2022 from the State Director to Yayasan Pahang and copied to the second applicant informing of the decision of the State Government, through the EXCO in its 25th Meeting dated 28 June 2022, to cancel the logging approval for the said license and approval letter dated 8 October 2015, ie, which amended the logging area from 206.39 hectares to 202.61, and that the licensee, Yayasan Pahang, submit a fresh application to substitute the area that had been cancelled and all payments and deposits made would be transferred to the new area ('the first decision'). In response to this letter, the second applicant wrote a letter dated 25 August 2022 to the State Director with three proposals to settle the

matter. In reply, the State Director issued a letter dated 7 September 2022 providing the reason to cancel the approval of the said license and the remedy for the cancellation ('the second decision'). Aggrieved, the applicants filed the present judicial review application and sought the following reliefs: (a) an order of certiorari to quash the first decision and the second decision; and (b) an order of mandamus directing the State Director and the State Government to renew and approve the renewal of the said license which was issued to Yayasan Pahang as licensee and the second applicant as the contractor. The applicants contended that: (i) they were not accorded the right to be heard before the first decision was made, and therefore, the decision was bad for procedural impropriety; (ii) there were no reasons given for the first decision, and therefore, the decision was bad for procedural impropriety; (iii) the first decision was ultra vires and therefore void for illegality; and (iv) the first decision was unreasonable and therefore the decision was bad for irrationality. The applicants had also relied on the doctrine of legitimate expectation, claiming that there was a positive representation made by the State Director in his letter dated 19 March 2021. On the other hand, the respondents submitted that: (1) there was no decision in the letter dated 7 September 2022; and (2) the applicants did not have the requisite locus standi as the decision cancelling the logging license concerned Yayasan Pahang as the licensee under Act 313.

Held, dismissing the application for judicial review:

(1) It was well established that judicial review concerned not only the decision-making process but also the substance of the decision. Thus, it was fundamental to identify the decision that was subject to judicial review. If there was no decision, judicial review did not lie, as there was nothing to review. The court found that the letter dated 7 September 2022 was merely a response by the State Director to the letter by the second applicant dated 25 August 2022. Thus, from the contents of the letter dated 7 September 2022, there was no decision and therefore nothing for the court to review. The relief of certiorari in respect of what was referred to by the applicants as the second decision was dismissed (see paras 28 & 31–32).

(2) In the present case, the evidence revealed that the said license captured the comprehensive licensor-licensee relationship between the State Authority and the State Director with Yayasan Pahang. The role of the second applicant was confined to being contractually bound to the first applicant. Also, not the least important was the fact that the statutory provisions dealing with the granting of logging approval and the Form 1 license underpinned the licensee's rights and obligations and did not extend the same to a third party with whom a licensee dealt or contracted with ie, the applicants. The court found that after considering the totality of the evidence, the judicial review application failed on the issue of

'substantive locus standi'. On this ground alone, the entire judicial review application was dismissed by the court (see paras 35 & 44–45).

(3) The State Authority approved the said logging area for the purpose of taking timber approval by way of a licence to Yayasan Pahang. Yayasan Pahang was the licensee and was still the licensee at the time the first decision was made. The applicants were strangers to this license. They had no rights under the said license. Therefore, they had no right to be heard, or be given reasons for the first decision or allege that the first decision was unreasonable (see para 47(a)).

(4) The first decision was claimed to be ultra vires because the State Director and the State Government did not have the power under s 18 of Act 313 to cancel the logging approval. However, as could clearly be seen in the letter dated 26 July 2022 and the letter dated 7 September 2022, the decision maker was the EXCO, ie, the State Authority. Therefore, the decision cancelling the logging approval was not the State Director or the State Government. The applicants had therefore sued the wrong party. The proper party was the State EXCO of Pahang, that was, the State Authority. The court was of the view that the Government and the Majlis Mesyuarat Kerajaan Negeri were not synonymous (see para 47(b) & (c)).

(5) The court found that the doctrine of legitimate expectation did not apply on the facts of the present case. At no time was there a clear and unambiguous representation by the State Director upon which it was reasonable for the applicants to rely. Further, if there was even a right of legitimate expectation, nothing was done to prosecute that right from November 2021 until the decision of the State Authority cancelling the logging approval on 26 July 2022. There was a delay of eight months. This delay was fatal, and the claim based on legitimate expectation was time-barred. The issue was only raised after the decision to cancel the logging approval was received (see paras 51–52).

[Bahasa Malaysia summary

Yayasan Pahang telah memohon dan memperoleh kelulusan untuk pembalakan di kawasan pembalakan yang terletak di daerah Jerantut, Pahang ('kawasan pembalakan tersebut'). Dalam hal ini, Pihak Berkuasa Negeri, iaitu Majlis Mesyuarat Kerajaan Negeri ('EXCO'), telah memberikan lesen menurut Akta Perhutanan Negara 1984 ('Akta 313') kepada Yayasan Pahang untuk mengambil hasil hutan ('lesen tersebut') dan lesen tersebut sah dari 15 Januari 2019 hingga 14 Januari 2020. Yayasan Pahang kemudiannya memeterai perjanjian pembalakan dengan pemohon pertama di mana dengan bayaran sebanyak RM2.94 juta, pemohon pertama akan mengekstrak dan mengambil kayu balak dari kawasan pembalakan tersebut. Perlu diingatkan bahawa pemohon pertama dan pemohon kedua mempunyai alamat berdaftar yang sama dan mempunyai pengarah dan pemegang saham yang sama. Lesen

tersebut telah dilanjutkan oleh Pengarah Perhutanan Negeri, Pahang ('Pengarah Negeri') untuk beberapa kali dan untuk lanjutan akhir, premium yang perlu dibayar adalah sejumlah RM125,263. Pemohon kedua kemudiannya memohon pengecualian pembayaran premium. Situasi tersebut berlarutan sehingga timbulnya surat bertarikh 26 Julai 2022 daripada Pengarah Negeri kepada Yayasan Pahang dan disalinkan kepada pemohon kedua yang memaklumkan keputusan Kerajaan Negeri, melalui EXCO dalam Mesyuarat ke-25 bertarikh 28 Jun 2022, untuk membatalkan kelulusan pembalakan bagi lesen tersebut dan surat kelulusan bertarikh 8 Oktober 2015, iaitu, yang meminda kawasan pembalakan daripada 206.39 hektar kepada 202.61, dan supaya pemegang lesen, Yayasan Pahang, mengemukakan permohonan baharu untuk menggantikan kawasan yang telah dibatalkan dan semua pembayaran dan deposit yang dibuat akan dipindahkan ke kawasan baharu tersebut ('keputusan pertama'). Sebagai tindak balas kepada surat ini, pemohon kedua menulis surat bertarikh 25 Ogos 2022 kepada Pengarah Negeri dengan tiga cadangan untuk menyelesaikan perkara tersebut. Sebagai balasan, Pengarah Negeri mengeluarkan surat bertarikh 7 September 2022 yang memberikan alasan bagi pembatalan kelulusan lesen tersebut dan remedi untuk pembatalan tersebut ('keputusan kedua'). Terkilan dengan keputusan-keputusan tersebut, pemohon-pemohon memfailkan permohonan semakan kehakiman semasa dan memohon relif-relif berikut: (a) perintah certiorari untuk membatalkan keputusan pertama dan keputusan kedua; dan (b) perintah mandamus yang mengarahkan Pengarah Negeri dan Kerajaan Negeri untuk memperbaharui dan meluluskan pembaharuan lesen tersebut yang dikeluarkan kepada Yayasan Pahang sebagai pemegang lesen dan pemohon kedua sebagai kontraktor. Para pemohon berhujah bahawa: (i) mereka tidak diberikan hak untuk didengar sebelum keputusan pertama dibuat, dan oleh itu, keputusan tersebut tidak sah kerana ketidakwajaran prosedur; (ii) tiada alasan yang diberikan untuk keputusan pertama, dan oleh itu, keputusan tersebut tidak sah kerana ketidakwajaran prosedur; (iii) keputusan pertama adalah ultra vires dan oleh itu terbatal kerana menyalahi undang-undang; dan (iv) keputusan pertama tidak munasabah dan oleh itu keputusan tersebut tidak sah kerana tidak rasional. Pemohon-pemohon juga telah bergantung pada doktrin jangkaan yang sah, dengan mendakwa bahawa terdapat representasi positif yang dibuat oleh Pengarah Negeri dalam suratnya bertarikh 19 Mac 2021. Sebaliknya, responden-responden berhujah bahawa: (1) tiada keputusan dalam surat bertarikh 7 September 2022; dan (2) pemohon-pemohon tidak mempunyai locus standi yang diperlukan kerana keputusan yang membatalkan lesen pembalakan adalah melibatkan Yayasan Pahang sebagai pemegang lesen di bawah Akta 313.

Diputuskan, menolak permohonan semakan kehakiman:

(1) Sudah menjadi undang-undang yang mantap bahawa semakan

kehakiman bukan sahaja melibatkan proses membuat keputusan tetapi juga isi kandungan keputusan tersebut. Oleh itu, adalah penting untuk mengenal pasti keputusan yang tertakluk kepada semakan kehakiman. Jika tiada keputusan, semakan kehakiman tidak diperlukan, kerana tiada apa yang perlu disemak. Mahkamah mendapati bahawa surat bertarikh 7 September 2022 hanyalah respons oleh Pengarah Negeri kepada surat pemohon kedua bertarikh 25 Ogos 2022. Oleh itu, daripada kandungan surat bertarikh 7 September 2022 tersebut, tidak terdapat keputusan dan oleh itu tiada apa yang boleh disemak oleh mahkamah. Relif certiorari berkenaan dengan apa yang dirujuk oleh pemohon sebagai keputusan kedua telah ditolak (lihat perenggan 28 & 31–32).

(2) Dalam kes semasa, keterangan menunjukkan bahawa lesen tersebut merangkumi hubungan komprehensif pemberi lesen-pemegang lesen antara Pihak Berkuasa Negeri dan Pengarah Negeri dengan Yayasan Pahang. Peranan pemohon kedua terhad kepada ikatan secara kontrak dengan pemohon pertama. Selain itu, yang tidak kurang pentingnya ialah hakikat bahawa peruntukan berkanun yang berkaitan dengan pemberian kelulusan pembalakan dan lesen Borang 1 menyokong hak dan obligasi pemegang lesen dan tidak meluaskannya kepada pihak ketiga yang berurusan atau berkontrak dengan pemegang lesen iaitu pemohon-pemohon. Mahkamah mendapati bahawa selepas mempertimbangkan keseluruhan keterangan, permohonan semakan kehakiman semasa gagal atas isu 'locus standi substantif'. Atas alasan ini sahaja, keseluruhan permohonan semakan kehakiman telah ditolak oleh mahkamah (lihat perenggan 35 & 44–45).

(3) Pihak Berkuasa Negeri telah meluluskan kawasan pembalakan tersebut untuk tujuan mendapatkan kelulusan kayu balak melalui lesen kepada Yayasan Pahang. Yayasan Pahang merupakan pemegang lesen dan masih merupakan pemegang lesen pada masa keputusan pertama dibuat. Pemohon-pemohon adalah orang asing kepada lesen ini. Mereka tidak mempunyai hak di bawah lesen tersebut. Oleh itu, mereka tidak mempunyai hak untuk didengari, atau diberi alasan untuk keputusan pertama atau mendakwa bahawa keputusan pertama adalah tidak munasabah (lihat perenggan 47(a)).

(4) Keputusan pertama didakwa sebagai ultra vires kerana Pengarah Negeri dan Kerajaan Negeri tidak mempunyai kuasa di bawah s 18 Akta 313 untuk membatalkan kelulusan pembalakan. Walau bagaimanapun, seperti yang dapat dilihat dengan jelas dalam surat bertarikh 26 Julai 2022 dan surat bertarikh 7 September 2022, pembuat keputusan adalah EXCO, iaitu Pihak Berkuasa Negeri. Oleh itu, keputusan yang membatalkan kelulusan pembalakan bukanlah Pengarah Negeri atau Kerajaan Negeri. Oleh itu, pemohon telah menyaman pihak yang salah. Pihak yang sepatutnya adalah EXCO Negeri Pahang, iaitu Pihak

Berkuasa Negeri. Mahkamah berpendapat bahawa Kerajaan dan Majlis Mesyuarat Kerajaan Negeri adalah tidak sinonim (lihat perenggan 47(b) & (c)).

(5) Mahkamah mendapati bahawa doktrin jangkaan yang sah tidak terpakai pada fakta kes semasa. Tidak pernah terdapat apa-apa representasi yang jelas dan nyata oleh Pengarah Negeri yang munasabah untuk disandarkan oleh pemohon-pemohon. Tambahan pula, jika terdapat hak jangkaan yang sah sekalipun, tiada apa yang dilakukan untuk mencetuskan hak tersebut dari November 2021 sehingga keputusan Pihak Berkuasa Negeri yang membatalkan kelulusan pembalakan pada 26 Julai 2022. Terdapat kelewatan selama lapan bulan. Kelewatan ini adalah memudaratkan, dan tuntutan berdasarkan jangkaan yang sah telah dihalang oleh had masa. Isu ini hanya dibangkitkan selepas keputusan untuk membatalkan kelulusan pembalakan diterima (lihat perenggan 51–52).]

Cases referred to

Basnol Abol & Ors v The State Government of Sarawak and other appeals [2004] MLJU 763; [2004] 2 CLJ 553, FC (refd)

Datuk Bandar Kuala Lumpur v Perbadanan Pengurusan Trellises & Ors and other appeals [2023] 3 MLJ 829; [2023] 5 CLJ 167, FC (refd)

Datuk Bandar Majlis Bandaraya Shah Alam & Anor v Yusuf bin Awang & Ors [2007] 7 MLJ 327; [2007] 4 CLJ 253, CA (refd)

Ketua Pengarah Jabatan Alam Sekitar & Anor v Kajing Tubek & Ors and other appeals [1997] 3 MLJ 23; [1997] 4 CLJ 253, CA (refd)

Majlis Perbandaran Pulau Pinang v Syarikat Bekerjasama-Sama Serbaguna Sungai Gelugor dengan Tanggungan [1999] 3 MLJ 1; [1999] 3 CLJ 65, FC (folld)

Malaysian Trade Union Congress & Ors v Menteri Tenaga, Air dan Komunikasi & Anor [2014] 3 MLJ 145; [2014] 2 CLJ 525, FC (refd)

R v Devon County Council, ex parte Baker and another; R v Durham County Council, ex parte Curtis and another [1995] 1 All ER 73, CA (refd)

Legislation referred to

National Forestry Act 1984 ss 3, 14, 15(1), 16, 18, 19, 22, 23(2), First Schedule, Form 1

Rules of Court 2012 O 53 r 2(4)

GJ Goldie (with Wan Aizuddin bin Wan Mohammed) (Jacob Goldie SS Chew) for the applicants.

Rozanna Abd Hadi (with Fatin Nur Syahirah bt Abd Rashid) (Assistant Legal Advisor, Pahang State Legal Advisor's Office) for the first and second respondents.

Mohd Amin bin Arsan (with Aisyah Naquiah bt Mohd Shamsul and Noor Syamimi bt Yusoff) (Abdul Razak Zulkifli & Partners) for the third respondent.

Amarjeet Singh J:

INTRODUCTION

[1] The main reliefs in these judicial review proceedings were framed by the applicants as follows:

(a) an order of certiorari to quash two decisions:

(i) the decision of the State Director of Forestry, Pahang ('the State Director') and the State Government of Pahang ('State Government') in the letter dated 26 July 2022 cancelling the approval for logging for a logging area of about 202.61 hectares described as Kompartment 1 Hutan Simpan Jerantut Tambahan, in the District of Jerantut ('the logging area') ('the first decision'); and

(ii) the decision of the State Director and the State Government in the letter dated 7 September 2022 ('the second decision') cancelling the approval for logging for the said logging area ('the second decision').

(b) an order of mandamus directing the State Director and the State Government to renew and approve the renewal of the licence to take forest produce No CJ-01–2–19 (KP) issued to the third respondent, Yayasan Pahang ('Yayasan Pahang') as the licensee and the second applicant as the contractor.

[2] The applicants had also sought declarations. I found the subject of the declarations superfluous as the same are matters that are being ventilated for the purpose of the order of certiorari. The subject of the declarations would determine whether the order of certiorari is to be granted.

[3] Apart from the above, the applicants also sought general, aggravated, and exemplary damages against the State Director and the State Government.

[4] On 29 April 2025, I dismissed the application. This judgment contains the reasons for my decision.

BACKGROUND FACTS

[5] The first applicant, Rosah Timber & Trading Sdn Bhd ('Rosah Timber'), and the second applicant, Beijing Million Sdn Bhd ('Beijing Million') are carrying on the business of logging operators. They have the same registered address at C-34, First Floor, Jalan Tengku Ismail, Temerloh, Pahang, and have common directors and shareholders.

[6] The State Director is appointed by the State Authority under s 3 of the National Forestry Act 1984 ('the NFA') and is responsible to the State Authority for the due administration of the provisions of the NFA within the State of Pahang. It is the lawful authority for the exercise of powers provided under the NFA. The State Director is assisted, amongst others, by district forest officers of the respective districts in the State of Pahang. One of the functions concerns the extraction of forest produce, which by definition includes trees for purposes of logging.

[7] The third respondent is Yayasan Pahang, a statutory body formed under the Yayasan Pahang Enactment.

[8] Yayasan Pahang applied for and obtained an approval for logging at the said logging area from the State Authority. The decision of the approval was made at the State Executive Council ('EXCO') in its fifth meeting of 2014 and conveyed in a letter dated 21 October 2014.

[9] Section 14 of the NFA provides that all forest produce situated within the permanent reserved forest or State land is the property of the State Authority, and s 15(1) of the NFA provides that such forest produce can be taken only under the authority of a licence. Any permission to take such forest produce may be granted by the State Authority. The empowering provision is s 19 of the NFA, which reads as follows:

> The State Authority may, in accordance with the provisions of this Chapter and of any rules, permit the taking of forest produce under licence from any permanent reserved forest or State land.

[10] When an executive function is to be exercised by the State Authority, such a function is carried out by the State EXCO. The Pahang State EXCO is the executive organ that exercises executive functions in the name of the Ruler. If authority is required, it suffices to refer to *Datuk Bandar Majlis Bandaraya Shah Alam & Anor v Yusuf bin Awang & Ors* [2007] 7 MLJ 327; [2007] 4 CLJ 253, where the Court of Appeal held:

> Thus, in the exercise of his functions under the law, a Ruler of a State shall act in accordance with the advice of the State Executive Council, and this would, of course, encompass the powers that a Ruler, as the State Authority, have under the provisions of the Act. As stated by Raja Azlan Shah FJ (as His Highness then was) in *Public Prosecutor v Datuk Haji Harun bin Haji Idris (No 2)* [1977] 1 MLJ 15 at p 20; [1976] CLJU 184; [1976] 1 LNS 97:
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> > It is the Executive Council who is the executive organ of the State Authority and exercise executive functions in the name of the Ruler.

[11] In the instant case, the State Authority, which is the EXCO, had

granted the approval to take forest produce under license in accordance with the provisions of the NFA. The licence must be in Form 1, First Schedule of the NFA titled 'LICENCE TO TAKE FOREST PRODUCE'.

[12] Ultimately, the licence in Form 1 was issued to Yayasan Pahang, who is the licensee, with No CJ-01–2–19(KP) and valid from 15 January 2019 to 14 January 2020 ('the licence') (see exh AHJ12 in encl 3). The licence came with conditions, was issued under the hand of the State Director.

[13] On 29 December 2015, Yayasan Pahang and Rosah Timber executed a private agreement titled *Perjanjian Balak* wherein for a consideration of RM2.94m, Rosah Timber will extract and take away the timber from the logging area, namely: (a) Compartment 1A HS Jerantut Tambahan; and (b) Compartment 36A and 39B HS Tekai Tembeling, Jerantut. Needless to say, that the *Perjanjian Balak* only binds Yayasan Pahang and Rosah Timber. It cannot be gainsaid that the right and liabilities of Rosah Timber is governed by the terms of the *Perjanjian Balak.* The offer letter by Yayasan Pahang to Rosah Timber dated 25 January 2015 is according to the endorsement in *Lampiran B* of the *Perjanjian Balak,* is to be taken and deemed part of the *Perjanjian Balak.*

[14] On 3 March 2015, Rosah Timber appointed Beijing Million as its contractor to carry out the extraction of timber for a consideration of 'RM210.00 *ton hasil yang akan diukur'.* In a letter dated 31 March 2016, Rosah Timber informed Yayasan Pahang of the appointment of Beijing Million as its logging operator. This meant that Beijing Million is on record with the Jerantut District Forestry Department as Yayasan Pahang's logging operator and would be dealing with the Jerantut District Forestry Officer ('the District Forestry Officer') with regard to matters concerning Yayasan Pahang as the licensee.

[15] The applicants contended that the knowledge of the District Forestry Officer is imputed on the State Director.

[16] On 23 May 2016, Yayasan Pahang, as the licensee and Beijing Million as the contractor had signed a declaration before the District Forestry Officer stating that they have read the conditions and additional conditions of the licence and agreed to comply with the same (see attachment C to the licence in exh 'AHJ12' of encl 3).

[17] On 13 September 2019, the District Forestry Officer wrote to the Beijing Million stating that he had no objection for access road works to be commenced, but that the extraction of forest produce cannot commence until approval is obtained from the State Director.

[18] On 2 December 2019, Beijing Million sought an extension of the

licence. The State Director granted the extension from 15 January 2020 until 14 May 2020. Beijing Million then informed the District Forestry Officer that extraction works for timber would commence, starting 1 February 2020. However, in a letter dated 20 February 2020, the District Forestry Officer informed Yayasan Pahang and Beijing Million that due to issues ranging from objections and interference by nearby villagers when the contractor sent in machines and vehicles into the area and to avoid further escalation, a postponement of works is put in effect until issues with the villagers are settled. As a result, the licence was extended another 8 months, effective from 15 May 2020 to 14 January 2021. The payment for the additional premium for the extension was exempted.

[19] In July 2020, the first applicant and the second applicant filed civil action No CA-22NCVC-22–07 of 2020 at the High Court at Kuantan against the villagers, inter alia, to injunct them from interference and nuisance. The injunction was allowed to stop the villagers from preventing the applicants from undertaking forest produce extraction works at Compartment 1A. Based on the court order dated 5 November 2020, the Director directed the District Forestry Officer to lift the postponement of the work order so that forest produce extraction works could commence.

[20] The licence was again extended for another five months from 15 January 2021 to 14 June 2021. However, the application by Beijing Million for the trees to be tagged was postponed pending the final decision by the High Court in the said civil action. On 7 October 2021, the applicants and the villagers entered into a consent judgment, which in actual fact was a judgment granting the orders that the applicants were seeking.

[21] Meanwhile, the licence had expired. An application to renew the licence was made on 15 March 2022. The application to extend was allowed, and the licence was extended from 15 December 2021 to 14 June 2022. A sum of RM125,263 was the premium to be paid for the extension. By letter dated 27 June 2022, the Beijing Million sought an exemption of the premium payment for the reason that the delay to commence works was at the instructions of the State Director's department and the delay in tagging of the trees that can be felled.

THE FIRST DECISION

[22] There, the matter stood until the emergence of a letter dated 26 July 2022 from the State Director addressed to Yayasan Pahang and copied to Beijing Million informing of the decision of the State Government, through the EXCO in its 25th meeting dated 28 June 2022, to cancel the logging approval for Licence No CJ-01–2–19 (KP) and approval letter dated 8 October

2015, ie, which amended the logging area from 206.39 hectares to 202.61, and that the licensee, Yayasan Pahang, submit a fresh application to substitute the area that has been cancelled and all payments and deposits made will be transferred to the new area.

THE SECOND DECISION

[23] On 25 August 2022, Beijing Million wrote to the State Director suggesting that:

(a) the State Director withdraws the letter dated 26 July 2022 and allows Beijing Timber within two months to commence extraction of the timber from the logging area, ie, Compartment 1A; or

(b) parties can agree with a substituted area, with the license being granted to Beijing Million with certain proposals.

Failing which State Director pays Beijing Million damages in the amount of RM15,104,546.

[24] It was in the response to this letter that the letter dated 7 September 2022 was issued by the State Director. The letter stated that:

(a) all approvals and the licence were granted to the licensee, Yayasan Pahang;

(b) the decision to cancel the approval for the licence was made by the EXCO based on the issue of public interest under s 18 of the NFA;

(c) the licence had expired;

(d) Beijing Million is the logging operator and does not have locus standi concerning the cancellation of the approval for the said licence;

(e) in regard to the licence, the State Forestry Department only deals with the licensee, Yayasan Pahang; and

(f) the licensee has also been asked to apply for a substitute logging area as decided by the EXCO.

[25] As a result, the instant application was filed for the orders stated above.

ANALYSIS AND DECISION

[26] I will address the grounds of review according to the submissions of the respondents and the applicants.

No decision in the letter dated 7 September 2022

A **[27]** The applicants contended that there are two decisions, ie, the first decision and the second decision and sought orders of certiorari to quash each one of the decisions. It was submitted by the State Director and the State Government that there is only one decision, and that decision is stated clearly in the letter dated 26 July 2022. It was submitted that there is no decision in the
B letter dated 7 September 2022.

[28] I agree with the submission. I find that there is no decision purportedly referred to as the second decision in the letter dated 7 September 2022. In the circumstances, there is no decision to quash by an order of certiorari. The letter
C dated 7 September 2022 by the State Director, which has been alluded to above (para 24), is merely a response to the letter by Beijing Million dated 25 August 2022, wherein three proposals were advanced to settle the matter after the decision of cancellation of the approval for logging came to the knowledge of
D Beijing Million.

[29] The contents of the letter dated 7 September 2022 are clear. The contents provide the reason to cancel the approval of the licence by the State Authority and the remedy for the cancellation as stated in letter dated 26 July
E 2022: (a) the decision to cancel the approval made by the State Authority is based on the issue of public interest under s 18 of the NFA; and (b) the remedy provided for the cancellation is that the licensee, ie, Yayasan Pahang has been informed that the cancellation comes with the right to be given a substitute logging area for the logging area cancelled and that all payments made and the
F deposit paid in respect of the cancelled logging area will be transferred to the new logging area to be proposed by way of an application by the licensee.

[30] Thus, there is only one decision, and that decision appears in the letter dated 26 July 2022. The decision maker was the State Authority and not the
G State Director. The decision is that the cancellation of the logging area in the public interest, and Yayasan Pahang is to be given a replacement area to substitute the area that has been cancelled without fresh payment, and the deposit paid for the cancelled area will go to the substituted area. The deposit made will be transferred to the new area.

H

[31] It is well established now that judicial review concerns not only the decision-making process but also the substance of the decision. Thus, it is fundamental to identify the decision that is subject to judicial review. If there is no decision, judicial review does not lie, as there is nothing to review. The
I decision in *Majlis Perbandaran Pulau Pinang v Syarikat Bekerjasama-Sama Serbaguna Sungai Gelugor dengan Tanggungan* [1999] 3 MLJ 1; [1999] 3 CLJ 65 is instructive. There, the principle was stated as follows:

> It is right to say, at the risk of being trite, that administrative law is much concerned with the legality of procedures leading up to a decision and, of course, of the

decision itself. *It is therefore a matter of the first importance to correctly identify the decision sought to be impugned.* Furthermore, *when the date on which a decision is made is important,* it may be necessary to know which of a series of acts constituted the effective decision for the purpose of the scheme in question. The same is true where a statute allows an appeal to be brought from a decision. *Failure to observe these basic requirements could have fatal consequences,* as the following authorities will serve to illustrate. ...

[32] Thus, from the contents of the letter dated 7 September 2022, there is no decision and therefore nothing for this court to review. The relief of certiorari in respect of what is referred to by the applicants as the second decision is dismissed.

Substantive locus standi

[33] It was submitted by the State Director and the State Government that Rosah Timber and Beijing Million do not have the requisite locus standi as the decision cancelling the logging license concerns Yayasan Pahang as the licensee under the NFA. It was submitted that the determination of locus standi is to be determined in the context of the NFA. The approval was granted to Yayasan Pahang, not to Rosah Timber or Beijing Million. There was no relationship between the State Director and the State Government with Rosah Timber and Beijing Million.

[34] The submission of the State Director and the State Government, whilst using the term 'adversely affected' which refers to 'threshold locus standi', had actually raised issues of 'substantive locus standi' as per their reasoning in their written submissions (encl 67). It is the substance of the submission that is crucial.

[35] I agree with the submission. I find that after considering the totality of the evidence, the judicial review application fails on the issue of 'substantive locus standi'.

[36] Before I give my reasons for so holding, it is opportune to state the law on 'substantive locus standi'. The starting point is the decision of the Court of Appeal in *Ketua Pengarah Jabatan Alam Sekitar & Anor v Kajing Tubek & Ors and other appeals* [1997] 3 MLJ 23; [1997] 4 CLJ 253. In that case, it explained the distinction between threshold and the substantive locus standi as follows (approved by the Federal Court in *Malaysian Trade Union Congress & Ors v Menteri Tenaga, Air dan Komunikasi & Anor* [2014] 3 MLJ 145; [2014] 2 CLJ 525):

A In public law — and, in so far at least as the appellants in the first and second appeal are concerned, the summons in the present instance lies in public law — there are two kinds of locus standi. The first is the initial or threshold locus standi: the second is the substantive locus standi.

Threshold locus standi refers to the right of a litigant to approach the court in B relation to the facts which form the substratum of his complaint. It is usually tested upon an application by the defendant to have the action struck out on the ground that the plaintiff, even if all that he alleges is true, cannot seek redress in the courts.

Although a litigant may have threshold locus standi in the sense discussed, he may, for substantive reasons, be disentitled to declaratory relief. This, then, is substantive locus C standi. The factors that go to a denial of substantive locus standi are so numerous and wide-ranging that it is inappropriate to attempt an effectual summary of them. *Suffice to say that they range from the nature of the subject matter in respect of which curial intervention is sought to those settled principles on the basis of which a court refuse declaratory or injunctive relief.*

D

[37] The latest case on the subject is *Datuk Bandar Kuala Lumpur v Perbadanan Pengurusan Trellises & Ors and other appeals* [2023] 3 MLJ 829; [2023] 5 CLJ 167, wherein the law was reiterated in the following words:

E (a) O 53 r 2(4) relates to threshold locus standi. The reference to substantive locus standi is, effectively, a reference to the substantive merits of the case, which allows the court to review its finding on threshold locus standi in view of the factual and legal matrix of the entirety of the matter; and

F (b) a person or entity may well fall within the broad approach to 'adversely affected' as envisaged under O 53 r 2(4) in the context of the particular area of law or statute dealing with the subject matter of a case, but yet may not succeed on a substantive examination of the matter because when the entirety of the legal and factual matrix is analysed, he may not have met the requirements to warrant the grant of the various remedies available G under judicial review.

[38] Thus, a person can be found to have been clothed with threshold locus standi, but can fail to meet the requirement of substantive locus standi because that person was not entitled to the reliefs sought. This happened in the H *Malaysian Trade Union Congress* case. In the same case, it was held that one would fail if a person fails to show that he has a legal right to seek the pleaded reliefs, that person lacks substantive locus standi. At this stage, which is at the conclusion of the hearing, the court has to assess the applicant's claim to standing against the whole legal and factual context of the application.

I

[39] In undertaking the exercise, I found irrefutable evidence that the State Authority approved Yayasan Pahang's application for a logging area under ss 14, read with 16 of the NFA. The approval came with the licence signed under the hand of the State Director. Yayasan Pahang was the licensee. When

the licence expired, the power was conferred on the State Director by the State Authority to renew the license under s 22 of the NFA. However, the decision to cancel the approval lies with the State Authority.

[40] On the other hand, the rights of the Rosah Timber, if any, would arise from the *Perjanjian Balak,* the private agreement between Rosah Timber and Yayasan Pahang. It cannot give rise to any right under the NFA. The only party which have any right under the NFA is Yayasan Pahang. Further, it was Rosah Timber who appointed Beijing Million as its contractor to do the work of timber extraction from the logging area for a price depending on the measurement of the timber extracted. Thus, the rights of Rosah Timber and Beijing Million arise from the contractual relationship of the parties in private law and not in public law, certainly not under the NFA.

[41] For avoidance of doubt, this court is not determining any dispute under the contractual arrangements of the parties in private law. Nor is this court construing the *Perjanjian Balak.* The issue before this court is whether Rosah Timber and Beijing Million has substantive locus standi in public law.

[42] I am satisfied that Rosah Timber and Beijing Million rights are in private law arising from the *Perjanjian Balak.* Thus, Rosah Timber has no right in public law to obtain the relief it is seeking. Beijing Million is the contractor for Rosah Timber, who appointed the same. The reason why Beijing Million signed a declaration before the District Forestry Officer is to signify that it had read and understood the conditions of the licence and will comply with the same.

[43] Yayasan Pahang is still the holder of the licence. That licence is not capable of transfer or assignment and by virtue of s 23(2) of the NFA is merely transferable or assigned with the prior written consent of the State Authority. There is no such prior written consent of the State Authority. Beijing Million is merely a contractor to extract timber from the logging area. As such, it has no rights in the licence.

[44] In the instant case, the evidence reveals that the licence captures the comprehensive licensor-licensee relationship between the State Authority and the State Director with Yayasan Pahang. The role of Beijing Million is confined to being contractually bound to Rosah Timber. Also, not the least important is the fact that the statutory provisions dealing with the granting of logging approval and the Form 1 licence underpins the licensee's rights and obligations and does not extend the same to a third party with whom a licensee deals or contracts with ie, Rosah Timber and Beijing Million.

[45] On this ground alone, the entire judicial review application is dismissed, and I so hold.

No right to be heard, no reasons, irrationality and illegality

[46] Rosah Timber and Beijing Million contended that:

(a) they were not accorded the right to be heard before the first decision was made, and therefore, the decision is bad for procedural impropriety;

(b) there were no reasons given for the first decision, and therefore, the decision is bad for procedural impropriety;

(c) the first decision was ultra vires and therefore void for illegality; and

(d) the first decision was unreasonable and therefore the decision is bad for irrationality.

[47] The submissions were devoid of merit for the following reasons:

(a) the State Authority approved the logging area for the purpose of taking timber approval by way of a licence to Yayasan Pahang. Yayasan Pahang is the licensee and was still the licensee at the time the first decision was made. Rosah Timber and Beijing Million are strangers to this licence. They have no rights under the licence. Therefore, they have no right to be heard, or be given reasons for the first decision or allege that the first decision was unreasonable;

(b) the first decision was claimed to be ultra vires because the State Director and the State Government did not have the power under s 18 of the NFA to cancel the logging approval. However, as can clearly be seen in the letter dated 26 July 2022 and the letter dated 7 September 2022, the decision maker was the EXCO, ie, the State Authority. Therefore, the decision cancelling the logging approval was not the State Director or the State Government. The applicants had therefore sued the wrong party. The proper party was the State EXCO of Pahang, that is, the State authority; and

(c) the Federal Court in *Basnol Abol & Ors v The State Government of Sarawak and other appeals* [2004] MLJU 763; [2004] 2 CLJ 553 held after a review of the authorities, that the Government of Sarawak is a legal entity separate from the Majlis Mesyuarat Kerajaan Negeri, ie, the EXCO. This is further supported by the use of the words 'the Government' and 'the Majlis Mesyuarat Kerajaan Negeri' separately in the SLC and, hence, in our view, would mean that the Government and the Majlis Mesyuarat Kerajaan Negeri are not synonymous.

Legitimate expectation

[48] Next, both Rosah Timber and Beijing Million relied on the doctrine of legitimate expectation, claiming that there was a positive representation made by the State Director in his letter dated 19 March 2021, in the following words:

> Dimaklumkan permohonan YH Dato' untuk dijalankan penandaan semula pokok-pokok dikawasan lesen CJ-01–2–19 (KP) ditangguhkan sementara waktu sehingga mendapat keputusan penuh Mahkamah berhubung kes ini.

[49] The final order of the civil suit was received on 5 November 2021, which was in favour of the applicants.

[50] The applicants relied on the first of four categories enunciated by Simon Brown LJ in *R v Devon County Council, ex parte Baker and another; R v Durham County Council, ex parte Curtis and another* [1995] 1 All ER 73, which categories were adopted by the Federal Court in *Majlis Perbandaran Pulau Pinang v Syarikat Bekerjasama-Sama Serbaguna Sungai Gelugor dengan Tanggungan* [1999] 3 MLJ 1; [1999] 3 CLJ 65. The category is provided as follows:

> Sometimes the phrase is used to denote a substantive right: an entitlement that the claimant asserts cannot be denied him. ... These various authorities show that the claimant's right will only be found established *when there is a clear and unambiguous representation upon which it was reasonable for him to rely.* Then the administrator or other public body will be held bound in fairness by the representation made unless only its promise or undertaking as to how its power would be exercised is inconsistent with the statutory duties imposed upon it. The doctrine employed in this sense is akin to an estoppel. In so far as the public body's representation is communicated by way of a stated policy, this type of legitimate expectation falls into two distinct sub-categories: cases in which the authority are held entitled to change their policy even so as to affect the claimant, and those in which they are not. ...

[51] I find that the doctrine of legitimate expectation does not apply on the facts of this case. First of all, the State Director did not make a representation the kind that is envisaged in the above category. What transpired was the applicants requesting for the retagging of the trees to be felled to be done again. The State Director responded, stating that the retagging is postponed until the final decision of the court in the civil suit filed against the villagers is received. At no time was there a *clear and unambiguous representation upon which it was reasonable for the applicants to rely*. There was nothing for the applicants to rely. They had to wait for the decision.

[52] Further, if there was even a right of legitimate expectation, nothing was done to prosecute that right from November 2021 until the decision of the State Authority cancelling the logging approval on 26 July 2022. There was a

delay of eight months. This delay is fatal, and the claim based on legitimate expectation is time-barred. The issue was only raised after the decision to cancel the logging approval was received.

CONCLUSION

[53] Most importantly, the State Authority in its decision had mandated a replacement area to be found to replace the area in respect of which the approval for logging was cancelled. Apart from that, on the area to substitute the cancelled logging area is approved on application to the State Authority, the licensee, Yayasan Pahang, is exempted from making the statutory payments, as the payments already made for the cancelled approval will go towards that payment.

[54] Based on the above analysis, the orders of certiorari, mandamus, and declaration cannot succeed. The application is, in the circumstances, dismissed.

Application for judicial review dismissed.

Reported by Dzulqarnain Ab Fatar